I would express no opinion as to whether the rule in question does indeed give the Commissioner power to deal with a case like the present one. The Court, however, possesses unlimited civil jurisdiction (see Articles 121 and 172 of the Constitution and Clause 77 of the Federation of Malaya Agreement), and in the absence of any express provision in any Enactment (and I have been unable to discover any) it seems impossible to argue that the rule quoted gives the Commissioner of Lands in Johore such exclusive jurisdiction in the matter as to oust the jurisdiction of the Court.

The second ground of appeal, however, has in my mind more substance and is to the effect that evidence of the oral agreement subsequent to 9th July, 1955, was wrongly excluded.

The appellant's real case was that some of the money paid by the respondent was paid in pursuance of this agreement and was not to be credited to the original loan. It may be that looking at the affidavits and the correspondence which is in evidence he would have had some difficulty in convincing any Court that this was so. Nevertheless if that was his case he was entitled to attempt to make it out. There is nothing in the second agreement which in any way varies the terms of the first agreement. Under the first agreement which was reduced to writing the respondent promised to pay $6,750 on 9th July, 1955. If he did so or if he paid off the loan at any subsequent date before the charge was enforced he was entitled to have the charge discharged. The subsequent oral agreement alleged by the appellant whereby in consideration of some sort of remuneration he agreed to refrain from enforcing his undoubted rights under the earlier written agreement did not vary the terms of the written agreement in any way.

The two agreements were entirely separate and distinct. It was not a case of the oral agreement being *prima facie* caught by section 92 of the Evidence Ordinance and it being for the party setting it up to show that it was rescued from inadmissibility by one of the provisoes to that section. The truth is that the oral agreement never came within the ambit of section 92 and was therefore never in need of rescue. In the circumstances evidence of the oral agreement was clearly admissible. That evidence might not have been believed. That is beside the point. It should have been admitted and heard.

I would, therefore, allow the appeal and order a new trial. In all the circumstances of the case, however, I would order that the costs of the appeal and the costs of the first trial should abide the event of the new trial.

Good J.: I have had the advantage of reading the learned President's judgment which I am in complete agreement. I have nothing more to add.

Neal J.: In this appeal I have had an opportunity of reading the Judgment of the learned Chief Justice. I agree that the appeal must be granted and that there must be a rehearing upon the terms therein stated. I agree also with the reasons stated and wish to add nothing thereto.

Appeal allowed.
New Trial ordered.

Solicitors: *A. N. Mitra; Murugason & Co.*

KOH YIN CHYE v. LEONG KEE NYEAN

[O. C. J. (Smith J.) March 20, 1960]

[Ipoh — Election Petition No. 4 of 1959]

Elections — Petition to declare election void — Election Offences Ordinance, 1954, s.10(a) — Promise to pay $1,000 for charity for use within constituency if elected — Whether a corrupt practice.

Section 10(a) of the Election Offences Ordinance 1954 reads: ".....every person who.....promises..... any money . . . . . for any elector or voter in order to induce any elector or voter to vote shall be deemed guilty of the offence of bribery".

Held: a general promise to give $1,000 a month for the purpose of charity or welfare within the constituency constitutes an infringement of the section.

ELECTION PETITION.

S. P. Seenivasagam (*D. R. Seenivasagam* with him) for the petitioner.

T. E. Atkinson (*Ng Lin Hong* with him) for the respondent.

Cur. Adv. Vult.

Smith J.: This is a petition by a person who voted at the Election for the Kampar Parliamentary Constituency held on August 19th, 1959. The petitioner prays that the election of the successful candidate, Mr. Leong Kee Nyean, should be declared void on the ground that he has committed corrupt practices of which the following are the particulars:—

(1) Between the date of nomination and day of polling offered to the electors, voters and people of the Parliamentary Constituency of Kampar a sum of $1,000 per month in order to induce the electors and voters of the said Constituency to vote for the said Leong Kee Nyean the respondent.

(2) On or about the 5th day of August, 1959, corruptly made a gift of $1,000 to the Chinese Burial Ground Organisation, Malim Nawar, in order to induce the electors and voters of the said Kampar Constituency to vote for the said candidate Leong Kee Nyean the respondent.

(3) Between the date of nomination and the date of polling did cause to be published and/or distributed advertisements and handbills which referred to the said election but did not bear upon their face the names and addresses of their printers and publishers.

It is convenient to deal with each of these charges separately, and I will do so in the reverse order.

With regard to the third charge there is no doubt that during the election campaign there

were displayed at various parts of the constituency posters bearing the sailing boat symbol of the Alliance Party, the respondent's party, some of which did not bear the name of the publisher and the name and address of the printer, and others of which did not bear the name of the publisher while bearing the name and address of the printer. I have been asked to deduce that because one or two examples have been produced in Court the vast majority of the symbols displayed either had no names and addresses on them or lack the name of the publisher. I do not consider that this is a deduction which I can properly make. I am aware that in the month of November there were still a fair number of posters to be seen in the constituency. I could have been asked to examine them though I was not, and did not. From the evidence of Mr. Ross who at the time of the election campaign was the production manager of Printcraft Limited, the printers of the posters, it is quite clear that a number of posters were issued without proper imprint. I am satisfied that the respondent took all reasonable steps to ensure that his election material complied with the law. There is no evidence to shew that he was aware that some of his posters did not comply with the law. I agree with Mr. Atkinson's view that if the petitioner wished to fix the respondent with liability for his supporters' actions then the charge should have expressly referred to his agents in the terms used in section 32(c) of the Election Offences Ordinance, 1954, i.e. the charge should allege that the particular corrupt practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate. In respect of these posters therefore the charge fails. I would add that even if the respondent had been charged with vicarious responsibility, it appears to me that in view of the small numbers produced in Court and the steps which he took to prevent such a thing happening it would have been an appropriate occasion for the Court to exercise powers under section 28 of the Ordinance and exonerate the respondent on the ground that the offence was trivial, unimportant and of a limited character.

There were also before the Court small slips of paper bearing an Alliance symbol with a cross against it intended to indicate to a voter how to cast his vote. It has been fully established that these symbols were dropped from an aircraft which flew over the Kampar and other constituencies on polling day scattering propaganda. I am satisfied by the evidence of Mr. Yeoh Kian Teik that this aircraft was what was known as the Alliance Party's "secret weapon" and I consider it as likely as not that the respondent knew nothing about it until after the event and cannot in view of the charges as framed be held in any way responsible for it. Fortunately, I am not in view of the way the charge is framed called upon to decide whether or not he is vicariously responsible for this act performed in his interest but without his knowledge.

The third type of advertisement which did not bear either the name of the publisher or the name and address of the printer were small slips like those just referred to but which in addition to bearing a cross bore also a picture of a hand and pencil making the cross. It was conceded by Mr. Seenivasagam for the petitioner that there was no evidence to shew whether these slips had been put into circulation at the time of the State or Parliamentary Election. There is therefor no case to meet in respect of these slips. The whole of the third charge relating to distribution of advertisements and handbills therefore fails.

With regard to the second charge the facts alleged by the respondent are as follows. In February, 1959, the respondent received a letter (R. 27) from a representative of a group of persons interested in providing a new public Chinese burial ground in Malim Nawar which letter asked for a contribution towards the construction fund of the burial ground. The respondent replied (R. 34) that he was in sympathy and would do all he could to assist and asked that he be informed again when preparation had been made for the construction of the new public ground. At the beginning of August a second letter (R. 28) was handed to him in Gopeng from the official in charge of collection of donations for the burial ground, reminding the respondent of his promise and requesting his donation. The letter was dated 2nd August and is chopped by the respondent as received on 3rd August. The respondent handed over a cheque for $1,000 at Malim Nawar on 5th August when he went there for an election meeting. The respondent's case in respect of this charge is that when he gave the $1,000 he was merely carrying out a promise which he had made earlier in the year. It is submitted by the petitioner that it is too remarkable to be a coincidence that the respondent should happen to give the sum of $1,000 to a local charity within a few days of the opening of his election campaign and then proceed to make use of the fact for propaganda purposes. It is submitted that in all the circumstances of the case it is only too clear that the gift was corrupt.

It was argued by Mr. Atkinson that the giving of money to a burial ground was far too remote from the individual voters to affect them in their voting. It is different from the long line of English cases in which gifts to charity have been made in such a way that the gift immediately finds its way in cash or kind into the hands of the voters. I cannot agree with this submission in view of the importance which is attached to burial in the Chinese way of life. I consider that the voters of Malim Nawar would be most favourably impressed by this gift to their new burial ground, and that the uncommitted would be moved to vote in favour of such a charitable and religious person.

I am not, however, in this charge directly concerned with the use that was made of the donation as propaganda after it had been made

but whether when the money was given it was given with a corrupt rather than or as well as a charitable intention.

It is part of the petitioner's submission that the correspondence which purported to pass in February was in fact subsequently fabricated to disguise the fact that an approach was only made to the respondent for a subscription after the opposition candidate had promised $500 to the fund. I consider that it is as likely as not that the correspondence of February was genuine. The first letter is dated 16th February, 1959; the reply is dated 26th February. If one were fabricating correspondence one would have expected the reply to have been dated round about the 17th or 18th February and not as late as ten days after, particularly in view of the evidence given which was that the respondent dictated to his secretary the reply as soon as he received the letter. If the date 26th February was invented by the respondent then it was a master stroke because it has convinced me that the correspondence of February is genuine, and I therefore regard it as likely as not that when the respondent gave $1,000 to the burial ground he did so without any corrupt intention. I consider it to be as likely as not that the donation to the Chinese Burial Ground was charitable and I therefore find that this charge also fails.

I turn now to the first charge. The allegation is that at the very first meeting which the respondent held in the Kampar Constituency he made a promise in the following terms.

"If the voters support me and get me elected, I will, besides the $500 allowance from the Legislative Council further add $500 to make up the sum of $1,000 which will be deposited in the bank monthly to be specified for purposes of welfare in Kampar District".

It is alleged that the substance of this promise was repeated by the respondent at various public rallies held during the election campaign. The words clearly amount to a promise that if elected the respondent will pay $1,000 for charitable purposes within his constituency. Section 10(a) of the Election Offences Ordinance says that "every person who . . . . . promises . . . . any money . . . . for any elector or voter . . . . . in order to induce any elector or voter to vote" shall be deemed guilty of the offence of bribery. A general promise to give $1,000 a month for purpose of welfare within the constituency appears to me to be a promise to give money for the electors and voters of the constituency and therefore to be a corrupt practice within the meaning of Part III of the Election Offences Ordinance.

The evidence adduced by the petitioner is that of persons who attended various meetings. They gave evidence of having heard the respondent make a promise more or less in the terms stated above. Not unexpectedly, nearly all these witnesses admitted being paid-up members of the defeated candidate's political party, the People's Progressive Party. Equally, nearly all the witnesses who gave evidence for the respondent were members of his political party, the Alliance Party. So far as the petitioner's witnesses were concerned none of them were particularly well-educated persons but they would probably have had no difficulty in understanding what was being said by the respondent who was speaking to them in colloquial Cantonese. I will deal later with his fluency as a public speaker in Chinese dialects. Since however the respondent was not particularly fluent there is always a possibility that they may have misunderstood what they heard, and also that they may have confused what they heard at the meeting with what they heard in coffeeshops which in its turn would probably have originated from the reports of speeches appearing in newspapers.

The respondent gave evidence that at two meetings only did he refer to his giving certain specific sums of money to charity. At the meeting at Kampar on the 2nd August he says that he made no reference to any specific sum of money at all nor did he refer to any of his acts of charity. On the 3rd August at Gopeng he did make a specific reference to his $500 allowance as a member of parliament and the fact that he was in the habit of giving $1,000 or more a month to charity. At Tronoh Mines on the 6th August he says that he did not mention charity or welfare that night. At Malim Nawar on the 14th August he says he spoke first in Malay and later for two minutes in Cantonese; and he says that he did not mention any specific sum of money that night. At an earlier meeting at Malim Nawar on the basketball pitch he said he never mentioned money or gifts to charity. The only rallies at which the respondent says that he mentioned any specific sum were at Gopeng on the 3rd August when he says he was replying to a P.P.P. attack that he had entered politics for gain, and at Kampar on the 13th August after the press reports had been brought to his notice.

Indeed, the reports in the local newspapers and particularly in the Kin Kwok Daily News are the key to this case. The reports appearing in these newspapers are not in themselves evidence of the truth of what went on at those meetings. The fact of publication is however of importance since it is necessary to consider very carefully how that particular report came to be written, why it was written in the way that it was and what the respondent did when he learnt of these reports.

In an ordinary case relating to a public meeting held in the English language the normal way of proving what a speaker says is to call as a witness an entirely independent newspaper reporter who was present and who took down verbatim what the speaker was saying. His independent evidence would then be extremely important corroborative evidence of other persons present at the meeting. The evidence relating to the manner in which the newspaper reports in this particular case were compiled has been most unsatisfactory. From the evidence which I have heard I am entirely satisfied that it would have been impossible to take down verbatim the reports which appeared in the Kin

Kwok Daily News. I have in fact only looked at the reports appearing in the Kin Kwok Daily News of August 4th p. 13, August 5th p. 15, August 14th p. 17, all of which came to the notice of the respondent as a whole and to that part of the report in the issue of the 16th August p. 19 which refers to the promises alleged to have been made by the respondent. It is quite clear from the length of these reports that they could not have been taken down verbatim: either they were copies of written speeches handed over to the reporter by the speaker or else they were composed by the reporter from memory or from asking various other people what was said. The evidence given by all the reporters in this case is most unsatisfactory and cannot be relied on in detail in any way whatsoever and can therefore only be accepted in the manner most favourable to the respondent. Accepting the evidence to this limited extent, it would appear that during the election campaign there was a remarkable amount of illness among normal newspaper reporters in the Kampar constituency and that for all practical purposes the only reporter operating was Mr. Sum who called himself the secretary of the official reporter, Mr. Soh, the representative of the Kin Kwok Daily News. The manner in which these two compiled the reports for the Kin Kwok Daily News, which reports were also made available to other Chinese newspapers, was as follows:

> "He (Mr. Soh) told me to listen what people had to say after what had happened. I would report back and write what he would ask me to do. Mr. Soh's handwriting is bad. I continued to help him until after election campaign".

The contents of the reports therefore are partly what Mr. Sum heard, partly what he picked up in coffeeshops from other people as evidence of what took place and partly something inserted which Mr. Soh told him to write in.

In this type of reporting it is of course perfectly possible that what has been said at one meeting is reported as having been said at another. On 2nd August, 1959, the respondent held a meeting at Kampar. The report of that meeting appeared in the Kin Kwok Daily News on the 4th August. The editor of the Kin Kwok Daily News, Mr. Chong Yew Hing, P.W. 6, gave evidence that he edits his paper between 7.30 p.m. and 1.30 a.m. The edition of the 4th August was therefore in the ordinary course of events edited between 7.30 p.m. on the 3rd and 1.30 a.m. on the 4th. The meeting on the 2nd started at 7.00 p.m. and was quite a long meeting. The report was sent up from Kampar sometime on the 3rd August. The next meeting of the campaign was held by the respondent at Gopeng on the 3rd at 7.00 p.m. and an alleged report of that meeting appeared in the Kin Kwok Daily News on the 5th August. At the first meeting of the campaign on the 2nd August the Kin Kwok Daily News reported the respondent as having in his speech made the promise which I have already referred to. The report of the Gopeng speech on the 3rd August includes the following promise:

> "If you support me, Leong Kee Nyean, on election day the 19th August, and if I am elected, I shall carry out my promises, and will use the monthly allowance of $500 as member of the Legislative Council, plus a further $500 of my own, making a total of $1,000 for the purposes of wlefare work in Kampar and Gopeng, for the period of five years".

The respondent denies mentioning money in his first speech at Kampar on the 2nd August. He does admit mentioning money in his speech at Gopeng on the 3rd August. He says that on 2nd August at Kampar all that he said was, "My own speech was 5 minutes . . . I just thanked people for coming to a public rally and introduced myself and told them to vote for Alliance. That is all I said".

The respondent gave evidence about the meeting at Gopeng on the 3rd August as follows:

> "On 3rd August at Gopeng I spoke again. I said something similar. I was told P.P.P. said I entered politics for gain so I replied on platform. I said being a politician or entering politics I am not the type of person and I cannot make money out of politics for advantage. I said before I entered politics I had been doing charity and welfare to the people over some $1,000 or more a month. Being a member of parliament my allowance is only $500 p.m. If elected so I shall still be $500 out of pocket. How can P.P.P. say I joined for personal gain and advantage?
>
> I did not say I would only pay it out if I won the election. I had no intention to bribe the voters. That was all I think".

It will be noted that there is only a slight difference between the two speeches. In the reported speeches the respondent is alleged to have said in effect "If I am elected I will give $1,000 a month for charitable purposes in the constituency." His own evidence however amounts to a statement that he has in the past been giving $1,000 or more a month to charity and that he will continue to do so whether elected or not and that he will not profit by being a member of parliament since the allowance is only $500.

It is to be noted however that the reported promise at Gopeng and the reported promise at Kampar are both very much the same. Since the people hearing the promise could have misunderstood it there is always a possibility that the reporter when he heard the promise misunderstood what was being said and then worked the statement up into fine flowery language until the speech as reported was arrived at. If the first report of a promise had been that made at Gopeng the reporter's misunderstanding of what the respondent said might well be the complete explanation of the charge against the respondent. The respondent however denies having mentioned money on 2nd August at Kampar. I am therefore asked to believe that the reporter when reporting the Kampar meeting made up a reference to the Legislative Council allowance of $500, the addition to it of another $500 making up in all a sum of $1,000 and that in doing so he happened entirely fortuitously to anticipate very closely the amounts which were going to be mentioned by the respondent in his speech at Gopeng on the evening of the 3rd. It is quite impossible for anything which was said at the meeting at

Gopeng on the 3rd to be included by mistake in the report of the meeting at Kampar on the 2nd August. The report of the meeting on the 2nd August had already been despatched to the editor of the Kin Kwok Daily News before the meeting at Gopeng on the 3rd started. I am therefore driven to the irresistible conclusion that at the meeting at Kampar on the 2nd something was said by the respondent about a member of parliament's $500, something was said about another $500 and something was said about the total of $1,000 being used for charitable purposes. There can be only two possible reasons for the respondent denying saying anything about money at the first meeting, either he has forgotten or he is deliberately lying.

The respondent's ability to express himself in Chinese is important. He is by birth a Hakka. In the family circle simple Hakka is spoken. He says himself that he speaks a little bazaar Cantonese and bazaar Hakka. I consider it probable that his Hakka is much better than his Cantonese. In view of the fact that he spoke at a very large number of election rallies in Cantonese I am satisfied that he was able to express himself simply throughout the campaign. He had the assistance of Mr. Kong Hong Wah, a fluent Cantonese speaker, to whom he could refer when preparing his speeches. I am satisfied that he would be able to make himself understood by an audience composed largely of Cantonese speaking working class people provided that he confined himself to simple subjects. I certainly consider that he could not possibly have delivered the whole of the speech attributed to him in the Kin Kwok Daily News of the 5th August. In so far as the speech attributed to him in the edition of the 4th August is concerned, it appears to me that he could deliver all that except paragraph 4 — the explanation of the present parliamentary elections — which appears to me to be an interpolation and possibly to have strayed in from the speech of Mr. Kong Hong Wah. So far as his speech at Jeram is concerned reported in the Kin Kwok Daily News of the 14th August since he was speaking in his own mother tongue whilst I do not consider that he necessarily could have expressed himself in the terms used I think he was perfectly capable of putting over the general sense of what was attributed to him. This does not of course prove that what is attributed to him is what he in fact said.

During election month the Kin Kwok Daily News was giving considerable coverage to the respondent's campaign. It has been suggested that Mr. Soh, the Kin Kwok Kampar reporter, was attempting to advance the respondent's cause by writing into the reports of his speeches propaganda which would help the respondent. I think that this is perfectly possible and that parts of the reported speeches of the respondent may well have been made up by Mr. Soh or other pressmen favourable to his cause.

The respondent's evidence is that the press reports did not come to his notice until the 13th August when his attention was directed to them by Mr. Yeoh Kian Teik, the legal adviser to the Perak Branch of the Alliance Party and himself a candidate for another constituency. I am prepared to accept the respondent's evidence that he knew nothing of these reports until 13th August. He has described the disorganisation existing in the Perak Branch of the Alliance Party at that particular time. His evidence was confirmed by Mr. Yeoh Kian Teik and other of his witnesses. In view of the split that had taken place in the Malayan Chinese Association at that time disorganisation was probable since the Chinese-speaking members had left the Association. It is probable that it was no one's duty to check what was said in the Chinese press.

Mr. Yeoh Kian Teik says that he heard about the press reports at one of his rallies when he was asked by a supporter whether he would make a similar promise in his constituency. The supporter said it was reported in the press that the respondent had promised to give money to the people of Kampar. The next morning Mr. Yeoh Kian Teik says that he rang up the respondent and asked him what he had in fact promised. The respondent told him that he had made no such promise. Mr. Yeoh Kian Teik suggested to the respondent that he should correct what was stated in the press. The respondent said that he would make a statement at the rally the same or the next night that he had not made the promises as published. The respondent's evidence on this point is similar to Mr. Yeoh's and reads as follows:

"He (Mr. Yeoh Kian Teik) said I was supposed to have said I would pay $1,000. He said why I would pay it for. He said I was only to pay this if elected. I said it was not true. He said why don't you write to editor or tell press men. I said press men can be good friends or bad enemies if you offend them so I said best way is to reply on platform at Kampar on 13th August".

The respondent says he made a speech the same evening at Kampar in the following form —

"I said before I entered politics I had been paying $1,000 p.m. and this P.P.P. accused me of saying if I enter politics it is for my personal gain and advantage. I said no matter what happened I still will do this charity and welfare for people. Almighty God help me to make money I will still carry on with charity. We are born naked we die naked. So I said what is this money after all, why amass money? That is all. A few thousand were present. Kampar was best attended place. On no other occasions did I mention money or charity".

In cross-examination he amplified this somewhat as follows:

"I was accused by P.P.P. that I entered politics for own gain which is not true. Before I entered politics my charity was over $1,000 p.m. Being a member of parliament my allowance is $500 p.m. I still would be out of pocket $500. How can they say I enter for advantage? Whatever happens I shall carry on.

I had already said that at Gopeng. I may have said more.

If you trust me and I will work for you vote for me. If you think P.P.P. can work better vote for them. Even if they accuse me of the bank business why if I have a balance of $1,000 why should not I.

I heard something about that I had not $1,000 in bank to pay charity.

I never said that I would pay $1,000 a month if elected.

I said newspaper was wrong about $500 and $500. None of those things were subsequently published.

I said all that with difficulty in Cantonese but I managed to get through.

I realised the seriousness at the time and could circulate in constituency.

I was puzzled. I did not send for Mr. Soh. We cannot afford to offend him. I said it publicly that it would carry more weight.

I said on 13th that what was reported is not what I said. Report is not correct. I gave correct version".

One interesting point to be noted with regard to that speech is that the respondent is making in Cantonese a speech containing expressions as complicated as the particular words complained of by the petitioner.

The manner in which the respondent reacted to Mr. Yeoh Kian Teik's advice is the nub of this petition. How would one expect a prudent man to act in the circumstances of this particular case? The respondent has said that he was always well aware of the law and that he always realised that to make a promise such as that complained of in the charge was unlawful. On the 13th August he is told by his legal adviser that he should correct the false reports. In fact he himself says that he was advised either to write to the editor or to tell the press men. Bearing in mind the danger of offending reporters it appears to me that the least that he could have done would have been to make a statement in his speech to the effect that there appeared to have been some misunderstanding as to what he had been saying with regard to his acts of charity, that he had not said that if he were elected he would give $1,000 a month to charity, and that what he had in fact previously said was that whether he was elected or not he would continue to give $1,000 or more to charity as he had in the past. The speech which he says he made however does not specifically correct what he is alleged to have said before. If this was intended to be a correction of a dangerously incorrect report it is a most remarkable correction. His sole denial of the press report was limited according to him to saying the press were wrong about the $500 and $500. The respondent who has reaped all the benefits of these valuable though false press reports wishes this Court to believe that what he said was intended to be a correction of the press reports. As I understand Mr. Atkinson the respondent's explanation is that the press were aware that the P.P.P. had been getting its material for attacking the respondent from the press reports of his meetings. If the respondent attacked the P.P.P. the press men would realise that he was indirectly pointing out to them the fact that they had incorrectly reported him. This he says he is corroborated by the fact that no report appeared of his meeting at Kampar. His counsel has referred to this explanation as being not incredible. I suppose there is a fleeting possibility that this explanation could be correct but it is not such a possibility that it can cause me to doubt or feel in any way unsure. The only reasonable explanation that I can find for the respondent not dealing roundly with the press in his public speeches is that he was well aware that what was reported in the press was either what he had said or what his supporters had given to the press with his full knowledge and consent. If the respondent was as aware of the law on the subject as he says he was then I am certain that he would have corrected those reports if they were in any way false. The probabilities are that his knowledge of election law was not all that great, that he thought that a promise of this nature was harmless and that his reason for not publicly correcting the press reports was that they were in substance true.

From the speech of Mr. Chow Ching Hoong, the first speaker at the respondent's first rally at Kampar it is quite clear that the respondent was being placed before the electorate as the worthy son of a respected father who had been noted for his charitable acts and that the respondent was following in his father's footsteps. That having been said it was not illogical for the respondent to tell the electorate what he intended to do for them by way of charity. It was possible to express his charitable intentions in ways which were either lawful or unlawful.

With regard to speeches that he made after the 13th August I consider it probable that he made no promises of the kind alleged but that he continued to make statements along the lines he said he made in his second speech at Kampar on the 13th August. There is corroboration. The report of his speech at Malim Nawar on the 15th August in the Kin Kwok Daily News of the 16th August, Ex p. 19, lends some support to this: he is alleged to have said that he would "continue to give to charity whether I am elected or not". The rest of the report of that speech I consider to be probably misrepresentation by the reporter.

I agree with the respondent's counsel that taken alone the evidence given by the petitioner's witnesses is unreliable. There are, however, two reliable facts in connection with this election petition. The first is that the respondent made no real attempt to deny the promises which he was alleged to have made. The second is that it was not possible for any part of the report of his speech at Kampar on the 3rd August to have become muddled with the report of his speech at Gopeng on the 3rd and that no reporter could possibly on the morning of 3rd August have made up a reference to the Member of Parliament's $500 allowance and giving $1,000 a month to charity which was to be the theme of his speech at Gopeng that night. Taking these two facts together I am completely satisfied and sure that at the beginning of his campaign the respondent was promising that if elected he would give $1,000 a month to charity for use within his constituency.

I therefore find that the first charge has been made out to my satisfaction and with that degree of certainty and sureness which is necessary in criminal cases. It has therefore been proved to my satisfaction that a corrupt practice has been

committed by the candidate Mr. Leong Kee Nyean of 17, Gopeng Road, Ipoh, in connection with his election and I therefore declare his election void. I shall certify accordingly to the Election Commission that the respondent has been guilty of a corrupt practice and that no other person has been proved to be guilty of a corrupt or illegal practice.

I will now hear any argument with regard to costs.

Order accordingly.

Solicitors: *S. Seenivasagam & Sons; Gibb & Co.*

KO TECK KIN v. WATKINSON

[A. C. J. (Buttrose J.) September 5, 1960]

[Singapore — District Court Appeal No. 6 of 1960]

Landlord and Tenant — Monthly tenancy — Notice to quit, validity of — Determination of tenancy in middle of current month.

In a monthly tenancy the period of the notice to quit, in the absence of special agreement, must correspond with the length of the tenancy and must determine at the end of a periodic month from the commencement of the tenancy.

Queen's Club Garden Estates Limited v. *Bignell* (1), and *Lemon* v. *Lardeur* (3) followed. *Simmons* v. *Crossley* (5) and *Khoo Soo Cheow* v. *Kam Teik Sean* (6) are no longer good law.

Cases referred to:—

(1) *Queen's Club Garden Estates Limited* v. *Bignell* 39 T.L.R. 496.

(2) *Precious* v. *Reedie* [1924] 2 K.B. 149; [1924] All E.R. Rep. 573.

(3) *Lemon* v. *Lardeur* [1946] K.B. 613; [1946] 2 All E.R. 329.

(4) *Hankey* v. *Clavering* [1942] 2 K.B. 326 at p. 330; [1942] 2 All E.R. 311, 314.

(5) *Simmons* v. *Crossley* [1922] 2 K.B. 95.

(6) *Khoo Soo Cheow* v. *Kam Teik Sean* (1912) 1 F.M.S.L.R. 87.

DISTRICT COURT APPEAL.

C. F. J. Ess for the appellant.

M. Karthigesu for the respondent.

Cur. Adv. Vult.

Buttrose J.: This is an appeal from a judgment of the Civil District Court dismissing the plaintiff's claim for one month's rent in lieu of notice.

The premises in question — No. 15C, Claymore Drive — were let by the plaintiff to the defendant on a monthly tenancy commencing on the 1st April 1959, at a rent of $300 per month payable in advance.

By letter dated the 20th August 1959 the defendant gave notice to the plaintiff of his intention to quit the premises on the 15th September 1959. The plaintiff by letter dated the 24th August 1959 informed the defendant that the notice to quit was not acceptable as a full calendar month's notice of termination was normally required.

Accordingly on the 1st September 1959 the defendant wrote to the plaintiff enclosing a cheque for $190 to cover the period up to the 19th September 1959, assuming, no doubt, that this would cover the full calendar month's notice required by the plaintiff.

On the 3rd September 1959 the plaintiff returned the cheque indicating that the tenancy was a monthly one determinable by one month's notice and advising the defendant that a notice to vacate the premises in question should be written immediately and despatched with a cheque for $300 to cover the month of September 1959.

The defendant, however, did nothing relying apparently on his letters of 20th August and 1st September 1959 and vacated the premises on the 8th September 1959.

The short question for decision is as to whether the letter of the 20th August 1959 giving notice of the defendant's intention to quit the premises on the 15th September 1959 is a good and valid notice to quit. That the defendant subsequently in his letter of the 1st September extended the date to the 19th September does not, in my view, affect the position.

Putting the question in another way, can the defendant determine his monthly tenancy in the middle of a current month of the tenancy or must it be at the end of it?

It is well established that in a monthly tenancy the period of the notice to quit, in the absence of special agreement, must correspond with the length of the tenancy and must determine at the end of a periodic month from the commencement of the tenancy. If authority is required see *Queen's Club Garden Estates Limited* v. *Bignell*(1), *Precious* v. *Reedie*(2) and *Lemon* v. *Lardeur*(3).

Here in my opinion the notice to quit dated the 20th August 1959, which must, of course, be strictly construed, was clearly invalid. By the wording of his notice the defendant purported to bring the tenancy to an end on the 15th September extended later to the 19th September 1959. In doing so he was attempting to do something which he had no power to do and although it may well have been that he misunderstood the plaintiff's letters of the 24th August and 3rd September 1959 and failed to appreciate the position that would not cure the defect because in the words of Lord Greene M.R. in *Hankey* v. *Clavering*(4) at p. 330: "the document was never capable on its face of producing the necessary legal consequence". It failed to comply with one of the conditions which the law prescribes namely, that where the tenancy is a monthly one it should expire at the end of a month from the date of the commencement of the tenancy.

It helps not at all to say how much I regret having come to this decision in the circumstances of this particular case and while I have every sympathy with the defendant in his predicament arising out of what may be thought to be a mere technicality, the law permits of no other answer.